

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 6:09-cr-60167-AA-2

No. 6:15-cv-00057-AA

v.

OPINION & ORDER

SHANNON DEAN EGELAND,

Defendant.

AIKEN, District Judge.

This matter comes before the Court on a limited remand from the Ninth Circuit for purposes of ruling on whether a certificate of appealability should be granted in this case. On August 23, 2022, the Court denied Defendant’s Motion for Reconsideration, finding that it was a disguised second or successive motion under § 2255. ECF No. 400. The Ninth Circuit has held that a certificate of appealability is required for a defendant to appeal from the denial of a motion brought under Federal Rule of Civil Procedure 60 seeking relief from a judgment arising out of the denial of a motion under 28 U.S.C. § 2255. *United States v. Winkles*, 795 F.3d 1134, 1142-43 (9th Cir. 2015).

Under 28 U.S.C. § 2253, a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In *Winkles*, the Ninth Circuit held that “a COA should only issue for the appeal arising from the denial of a Rule 60(b) motion in a section 2255 proceeding if the movant shows that (1) jurists of

reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion and (2) jurists of reason would find it debatable whether the underlying section 2255 motion states a valid claim of the denial of a constitutional right.” *Winkles*, 795 F.3d at 1143.

In this case, the Court concludes that Defendant has not made the required showing for the reasons set forth in the Court’s Order denying Defendant’s original § 2255 motion, ECF No. 376, and for the reasons set forth in the Court’s Order denying Defendant’s more recent motion brought under Rule 60, which the Court found to be an improper second or successive motion under § 2255. ECF No. 400. The Court therefore declines to issue a certificate of appealability in this case.

It is so ORDERED and DATED this 6th day of October 2022

/s/Ann Aiken

ANN AIKEN

United States District Judge